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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 134 (VSB)

5 CALVIN DARDEN, JR.,

6 Defendant.

Conference

7 -----x  
8  
9 New York, N.Y.  
September 17, 2024  
10 10:00 a.m.

11 Before:

12 HON. VERNON S. BRODERICK,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

United States Attorney for the  
Southern District of New York

16 KEVIN MEAD

17 STEPHEN J. RITCHIN

WILLIAM C. KINDER

18 BRANDON C. THOMPSON

Assistant United States Attorney

19 DONALDSON CHILLIEST & MCDANIEL LLP

20 BY: XAVIER R. DONALDSON

-and-

21 ANTHONY RICCO

STEVEN Z. LEGON

22 Attorneys for Defendant

23 Also Present:

Alexander Ross, Paralegal

24 Arjun Ahuja, Paralegal

Melissa Baccari, FBI Special Agent

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1 (In open court)

2 MR. RICCO: I was going to say, your Honor, if it's  
3 okay with the Court, we moved over here because it's a better  
4 view of the jury. We'll move back, of course, when we start.

5 THE COURT: Okay. The only thing I ask is that when I  
6 do introduce the folks, stand up just so the jury can make sure  
7 they can see you, that's fine.

8 All right. Well, why don't you discuss the issue, and  
9 then we'll figure it out. But are there other issues we should  
10 take up before we finish getting everything ready to bring the  
11 jurors over?

12 MR. MEAD: We have some minor things, your Honor. I  
13 defer to the Court. If there's a panel ready, we could take  
14 them up at lunch or the end of the day. I defer to the Court  
15 for the end timing.

16 THE COURT: Why don't we do that. I think there  
17 probably is a panel across the street waiting to come over. So  
18 why don't we do that. Let me just confirm, Mr. Ricco, does it  
19 make sense to not swear them in today?

20 MR. RICCO: Yes.

21 THE COURT: Okay. All right. Great. We're all in  
22 agreement, so we'll bring the panel over now. And as I  
23 mentioned, we'll put as many folks as we can in the jury box  
24 and hopefully get to 32, maybe using the first two rows. And  
25 then I'll start asking the questions.

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1 MR. MEAD: Logistically, Mr. Ahuja, one of our  
2 paralegals, is going to be here for the very beginning of jury  
3 selection so the jury can see him. We're then going to send  
4 him out for the rest of the day. But I think we were going to  
5 have him sit here, if that's okay with the Court. I'm not sure  
6 where else we could put him.

7 THE COURT: That's fine. We would then -- I'll either  
8 have the prospective jurors sit to my right, your left, or --  
9 in other words, to fill out the 32. Okay.

10 MR. DONALDSON: One other issue logistically, so  
11 Ms. Reed, of course, is one of the defense counsel on the team.  
12 She's not going to be here today. So I'm thinking we might  
13 want to mention that to the jurors that she will be here at  
14 some point. I don't want her to appear and who is that?

15 THE COURT: Is Mr. Legon going to be here?

16 MR. RICCO: He's going to be here. He's on his way.

17 THE COURT: Why don't we wait.

18 MR. DONALDSON: Let's wait till Mr. Legon gets here.  
19 As far as Ms. Reed is concerned, she will be here at the start  
20 of the trial, but not for jury selection.

21 THE COURT: Okay. All right. Great. Thank you.

22 (Pause)

23 MR. RICCO: Judge, I was just in touch with Mr. Legon.  
24 I think we should probably get started because he has  
25 difficulty controlling his time.

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1 THE COURT: Okay.

2 MR. RICCO: So --

3 THE COURT: So we might as well -- Mr. Mead, you  
4 mentioned there might be some preliminary things. Are they  
5 relatively quick?

6 MR. MEAD: Yes, your Honor. I think so.

7 One is this is entirely the government's fault, but we  
8 suggested moving to a larger courtroom for the trial. Looking  
9 at the size of the tables, which had kind of been our main  
10 concern, I think that the Court's courtroom makes more sense.  
11 Obviously, for jury selection I think we should stay here, but  
12 if possible for the Court, I think it would make sense to move  
13 back to the Court's courtroom for Monday.

14 THE COURT: Any thoughts on that from the defense? I  
15 don't have a problem with that, but we can fit 14 in the jury  
16 box.

17 MR. DONALDSON: I don't have a problem with that. The  
18 only thing I would ask is that we do my electronic check up  
19 there sometime this week. I just want to make sure everything  
20 works up there like it works down here, so we can do that.  
21 Other than that, it's fine. More comfortable is more  
22 comfortable.

23 THE COURT: Okay. All right.

24 MR. MEAD: There are a couple of motions the  
25 government has filed, two under seal, and then the motion about

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1 the Wiseman cross. I think that the defense's responses to  
2 that I think are due on Wednesday is my understanding.

3 We discussed introducing documents via Federal Rule of  
4 Evidence 902(11), which is the certifications to authenticate  
5 business records. I've had a couple of conversations with  
6 defense counsel. My understanding is that they generally are  
7 not planning to challenge authenticity on that ground, but  
8 they're still thinking about it to some extent.

9 I'm not sure if it makes sense to kind of put some  
10 kind of deadline on it or for us is talk further about it. I  
11 don't think there will be a challenge to authenticity. I don't  
12 think a challenge to authenticity, even if one were made, would  
13 prevail, but we want to make sure we're not delaying the trial  
14 for that.

15 THE COURT: If you had the option, you may decide to  
16 call the person if you wanted.

17 So let me turn to the defense. Is it that you haven't  
18 looked at the documents yet so you're not quite sure? In other  
19 words, what's the -- because the issue would be whether the  
20 government would call a live person or have me rule that the  
21 certification is sufficient to overcome any objection.

22 Mr. Donaldson?

23 MR. DONALDSON: We have had some discussions with the  
24 government about this issue. The government's correct that  
25 there likely will not be an objection. We have been going

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1 through all exhibits. My issue, as I told the government, is  
2 that I found some documents that in my opinion just weren't  
3 supposed to be where they claim they were. And so because of  
4 that, I wasn't willing to wholesale consent to the authenticity  
5 of certain packages of documents because, again, quite frankly,  
6 some documents just weren't where they were supposed to be. So  
7 I told them I would get back to them shortly, and I will do  
8 that this afternoon or sometime this evening.

9 THE COURT: Okay. I'd like you to do that by  
10 Wednesday to provide them -- in other words, where those issues  
11 are -- and by "issues," I mean where you have a package of  
12 documents that are under a certification where you think that  
13 several documents within that are not properly part of that  
14 batch so that we can figure that out. If need be, we can  
15 have -- I can hear from the parties later in the week so we can  
16 resolve that issue if there's still a problem.

17 The other option is if there are documents that -- and  
18 again, it's up to the parties, but if there are documents the  
19 government wasn't going to rely on anyway and the certification  
20 otherwise meets the defense scrutiny, we can just excise the  
21 other -- I mean, I don't know what the certification says, but  
22 if the parties agree, we can move forward that way. And look,  
23 obviously, Mr. Donaldson, Mr. Ricco, I'm not -- whatever you  
24 decide to do, it's entirely up to you. We just need to know  
25 sooner rather than later.

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1 MR. DONALDSON: I understand. Thank you.

2 MR. MEAD: The Court asked the parties to confer as to  
3 whether the Court should instruct the jurors not to watch  
4 *Dancing with the Stars*, and we both think that is the right  
5 course. And we think the Court should instruct the jury not to  
6 watch that television show.

7 THE COURT: Should I tell him why? When does the  
8 witness start on the show?

9 MR. MEAD: I believe it's tonight.

10 MR. DONALDSON: I believe it's tonight. And there is  
11 just -- I believe it's tonight, and I don't know whether or not  
12 the Court's instruction goes as far as the dancing with the  
13 stars show as well as these podcasts that now are popping up  
14 where the potential witness is talking about everything that he  
15 can talk about. So I would ask the Court in its general  
16 instructions to have them not watch anything related to the  
17 witness.

18 Again, I just think that he's in the interest of I  
19 guess promoting his *Dancing with the Stars* show and also  
20 promoting other things, he's doing a lot of now podcasts and --  
21 well, he has a podcast and doing other thing, so I think that's  
22 important that we instruct the jury not to watch anything  
23 related to Mr. -- well, the witness.

24 THE COURT: You can say his name, right?

25 MR. DONALDSON: Okay. Mr. Howard.

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1 THE COURT: Okay. Any objection from the government  
2 to that?

3 MR. MEAD: No. We think that makes sense as well,  
4 your Honor.

5 THE COURT: Okay. With regard to the motion that was  
6 filed I think yesterday under seal, my understanding is that  
7 the defense intends to cross-examine about the issues that were  
8 discussed in that letter. Do you intend, Mr. Donaldson, to  
9 file an opposition?

10 MR. DONALDSON: Are we speaking of the motion that was  
11 filed yesterday under seal?

12 THE COURT: Correct.

13 MR. DONALDSON: Yes.

14 THE COURT: All right. When in the order of witnesses  
15 is that person going to be called as a witness?

16 MR. MEAD: Wednesday morning we think, your Honor.

17 THE COURT: Okay. So Mr. Donaldson, I'd like to get  
18 any objection that you have. Since we're getting other things  
19 on Wednesday, why don't we say on Wednesday so that we can  
20 round that out and figure out exactly -- because my  
21 understanding is or the phrasing that the government used  
22 was -- well, to the extent that your cross-examination would be  
23 circumscribe as to particular issues relating to what the  
24 government discussed, I'd like you to meet and confer to figure  
25 out whether the government has views with regard to certain

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1 parts of it, your cross, or not. But otherwise I'd like to get  
2 the opposition by Wednesday.

3 MR. DONALDSON: I'll get the opposition to the Court  
4 by Wednesday.

5 THE COURT: Okay. Mr. Mead?

6 MR. MEAD: I assume the Court means Wednesday  
7 tomorrow, not Wednesday --

8 THE COURT: You know what? Why don't we make it  
9 Thursday. I had Monday on the brain. Sorry. Why don't we  
10 make it Thursday.

11 MR. DONALDSON: I did as well. I thought today was  
12 Monday.

13 THE COURT: Okay. So Thursday. But the other  
14 oppositions are due tomorrow.

15 MR. MEAD: Just an evidentiary issue that I don't  
16 think there will be an issue with, but I wanted to put on the  
17 record now, the co-conspirator in this case is Charles Briscoe.  
18 We seized phones from Mr. Briscoe, we do intend to introduce  
19 evidence from those phones. Mr. Briscoe through his attorney  
20 requested the return of those phones, and we returned them to  
21 him as evidence.

22 So our plan to introduce the documents would be to  
23 call the individual who extracted those phones. He will  
24 testify to the extracted phones with a particular serial  
25 number. We'll link those serial numbers to Mr. Briscoe, and

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1 he'll testify that certain documents from the extraction are  
2 true and accurate copies of materials that were on that  
3 extraction. I don't think any of that is controversial, but  
4 obviously it's an important part of the case and I wanted to  
5 front it for the Court and defense.

6 THE COURT: Mr. Donaldson?

7 MR. DONALDSON: We don't see a problem with that,  
8 Judge. We'll address it when it comes, but I have no issue  
9 with that right now.

10 MR. MEAD: And then last issue, your Honor, on the  
11 defense case, we're very grateful that the defense provided a  
12 witness list on Friday evening. A couple of issues kind of  
13 related to that. One is that there are two lawyers on that  
14 defense witness list. It is my understanding that the defense  
15 is not going to assert any sort of advice of counsel or  
16 presence of counsel defense. There's been no notice here.

17 My general understanding from my conversation with the  
18 defense was the same as to that. But I think the defense is  
19 still perhaps a little bit thinking about it, and so I just  
20 wanted to make sure that that was on the record that -- I mean,  
21 look, we think it's too late, and I don't think they're going  
22 to make that defense anyway. But I just wanted to front that  
23 for the Court as well.

24 THE COURT: These lawyers, had they represented  
25 Mr. Darden?

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1 MR. MEAD: It's a bit complicated, your Honor. One of  
2 them is named Art Horne. I understand -- and this is based on  
3 the government's understanding and perhaps could be wrong. I  
4 understand that Mr. Horne represented Mr. Darden in an  
5 unrelated previous matter and discussed representing Mr. Darden  
6 in connection with this criminal case now, but did not do so.  
7 That's my understanding.

8 Again, the defense may have some more information  
9 about that. The other attorney is Michelle Pamies. It is my  
10 understanding that the defendant and his co-conspirator hired  
11 her in connection with the Atlanta Dream deal, but that her  
12 client was technically Dwight Howard, the victim. And that's  
13 based on invoices that we submitted listing Mr. Howard as the  
14 client. We have not yet spoken to Ms. Pamies, and so it's a  
15 little bit opaque to us.

16 Obviously, if there were to be some sort of advice of  
17 counsel or presence of counsel defense, that is typically  
18 raised weeks before trial, and there's many disclosures and  
19 things to be made. And I don't think the defense is going to  
20 do that. I just want to be clear about that.

21 THE COURT: I think yes, if there was going to be  
22 advice of counsel defense, I would have wanted to hear about  
23 it. But preliminarily, I mean, is there going to be a waiver?  
24 In other words, if Ms. Pamies represented Mr. Howard, wouldn't  
25 Mr. Howard have to waive his attorney-client privilege as well

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1 as whoever -- in other words, I don't know what the nature of  
2 the testimony is, but if you're calling lawyers who represented  
3 folks, they would have to waive their privilege depending on  
4 the scope of the testimony. And then wouldn't you be entitled  
5 to get everything associated with that attorney-client  
6 relationship?

7 MR. MEAD: They're not our witnesses.

8 And another issue -- sorry. Go ahead, your Honor.

9 THE COURT: No. No, finish your thought.

10 MR. MEAD: Another somewhat related issue is we  
11 haven't received any 26.2 material for any of the defense  
12 witnesses, so we have no understanding of what the scope of  
13 their anticipated testimony is.

14 THE COURT: Okay. All right. Mr. Donaldson,  
15 Mr. Ricco, in terms of the lawyers, I just need to know if it's  
16 about or implicates the attorney-client relationship with  
17 either Mr. Darden or Mr. Howard because there are a lot of  
18 things I would have to -- well, first, is there going to be an  
19 advice of counsel defense?

20 MR. RICCO: If there were, your Honor, you would have  
21 received notice of it.

22 THE COURT: Okay. That's a no?

23 MR. RICCO: That's a no.

24 THE COURT: Okay. All right. And second, is the  
25 testimony going to implicate the attorney-client relationship?

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1 In other words --

2 MR. RICCO: I understand. The answer is no, as far as  
3 we know, Judge. Oftentimes individuals who are fact witnesses  
4 have other titles like lawyers, psychiatrists, etc. etc., but  
5 that doesn't mean that that's within the scope of their  
6 testimony. So these are fact witnesses.

7 THE COURT: Okay.

8 MR. DONALDSON: Potentially.

9 MR. RICCO: Mr. Donaldson added the word "potential."

10 THE COURT: Okay. All right.

11 MR. RICCO: And their names are on the list because  
12 their names will be the subject of testimony whether or not  
13 they testify or not.

14 THE COURT: Sure. I understand. All right.

15 So I guess right now there's nothing to be done. But  
16 if it turns out you are going to, in fact, call those folks --  
17 and you may not need to -- I may ask you to give a proffer at  
18 least to me of what their testimony would be. It's one thing,  
19 oh, I was present at a meeting and there were other people  
20 there, as opposed to, yes, I was meeting with Mr. Darden and he  
21 was telling me X, Y, and Z. So I just want you to be prepared  
22 that I may ask for that to happen.

23 MR. RICCO: Yes, sir.

24 THE COURT: Okay. All right. Thank you.

25 Anything else, Mr. Mead?

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1 MR. MEAD: Somewhat relatedly, we haven't received  
2 26.2 material for any witnesses. We haven't gotten the exhibit  
3 list yet. I don't know if the defense has contemplated  
4 exhibits. I don't know if they have 26.2 material from any  
5 interviews. But if they do, we'd obviously like to get it on  
6 the sooner side, your Honor.

7 THE COURT: All right. First, I guess, is there such  
8 material and when would that material -- because I think,  
9 Mr. Donaldson, I have a vague recollection that at the final  
10 pretrial conference there was mention of certain documents, so  
11 let me ask when -- and any 3500 equivalent.

12 MR. DONALDSON: Your Honor, I think we talked about  
13 defense exhibits, and I think the Court indicated that we  
14 will -- well, I indicated and the Court agreed that we would  
15 get those to the government as quickly as possible. We just  
16 don't have those put together yet as far as any 26 documents or  
17 3500 documents. We will also abide by our responsible  
18 obligations to get those to the government as quickly as  
19 possible. If we have it, we will make sure they get them.

20 THE COURT: I didn't catch the last part.

21 MR. DONALDSON: If we have any documents related to  
22 any witnesses that we will be calling, we will get those  
23 documents over to the government as quickly as possible.

24 THE COURT: So Mr. Mead, I will consider sort of a  
25 deadline for that. Obviously defense doesn't need to call any

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1 witnesses, and the government hasn't started its case, opened  
2 or anything like that, so it may be at some point during the  
3 government's case. But what I want to avoid, Mr. Donaldson,  
4 Mr. Ricco, is any delay because of that. Okay.

5 Anything else, Mr. Mead?

6 MR. MEAD: No, your Honor. Thank you.

7 THE COURT: Anything from the defense?

8 MR. DONALDSON: No, your Honor. Thank you.

9 THE COURT: Okay. All right. So why don't folks take  
10 a break because we're going to bring -- to use the restroom.  
11 We're going to bring the panel over in ten minutes, okay?

12 MR. DONALDSON: Very well. Thank you.

13 THE COURT: Thank you very much.

14 (Recess)

15 THE COURT: So we're going to bring the jury over.  
16 I've donned a mask because I have some sniffles. And until I  
17 confirm -- I don't think it's COVID, but I'm going to wear it  
18 just in case and obviously during sidebars. But I'm in the --  
19 because all the COVID tests I have are expired, so I need to  
20 get some up-to-date ones.

21 We're going to bring the prospective jurors over. Is  
22 there anything we need to take up before we bring them over?

23 MR. MEAD: No, your Honor.

24 THE COURT: Okay. Let's go.

25 (Adjourned)